

## **REMARKS/ARGUMENTS**

The Applicants have carefully considered this Application in connection with the Examiner's Final Action and respectfully requests reconsideration of the Application in view of the following remarks.

The Applicants originally submitted Claims 1-20 in the application. Claims 1, 8 and 15 are amended in this response. Accordingly, Claims 1-20 are currently pending in the application.

### **I. Rejection of Claims 1-3, 7-10 and 14 under 35 U.S.C. § 102(e)**

The Examiner rejects Claims 1-3, 8-10 and 14 over U.S. Patent Application Publication No. 2002/0073084 to Kauffman, *et al.* (Kauffman). Specifically, the Examiner asserts that Kauffman teaches all the elements of Claim 1, including a tracking system that retrieves as-run logs from remote media players. The Applicants respectfully disagree.

Kauffman teaches a networked multimedia distribution system that provides the ability to insert advertisements into the playback stream multimedia file destined for an end-user. See Abstract. Components of this system include a local point-of-presence (POP) 32 and a residential gateway device, such as a television 12 and a computer terminal 16. See ¶ 17; Fig. 1. The POP 32 comprises a caching inserter 30 that provides functionality to insert an advertisement into the playback stream. See ¶ 18. Furthermore, Kauffman teaches a billing system 42 that may be configured collect information on the identity of the various advertisements inserted into the playback stream, and various history parameters related to their playback, from the caching inserter 30.

In construing the breadth of Claim 1, the Examiner improperly reads “remote players” on multiple, distinct elements in Kauffman. While each claim is given its broadest reasonable interpretation, such interpretation must be done in light of, and consistent with, the written description. M.P.E.P. § 2163 at 2100-168. Without arguing an additional limitation to Claim 1, the Applicants respectfully direct the Examiner to the Specification, ¶ 29, for examples of remote players, which include the ability to “play[] the distributed media and advertising and return[] as-run logs....” The Examiner appears to read “remote players,” as recited in Claim 1, lines 3 and 6 on Kauffman’s computer terminal 16, but then also appears to read “remote players” as recited in Claim 1, line 9 on Kauffman’s caching inserter 30.

But a caching inserter 30 is not a remote player, configured to convert media to audio or video content to be heard or viewed by an audience, as recited in independent Claim 1, as herein amended. A caching inserter 30 “functions to monitor incoming streaming multimedia along link 34 and insert...an advertisement, at a location along the stream.” Kauffman ¶ 18. Claim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. M.P.E.P. § 2106 at 2100-8. One of ordinary skill in the art understands that a caching inserter 30 is not a remote player, since it is not capable of playing a media file to an audience. Moreover, there is no support in the claim or the specification for interpreting “remote player” broadly enough to include both the computer terminal 16, which may play a media file, and caching inserter 30, which can only insert an advertisement into a media stream, but cannot play the stream.

Therefore, Kauffman does not anticipate the elements of independent Claim 1, “remote players configured to convert said media to audio or video content for listening or viewing by an audience,” and “a tracking subsystem that retrieves as-run logs from said remote players...” and fails

to sustain a rejection of Claim 1 under 35 U.S.C. 102(e). Kauffman similarly fails to anticipate the comparable elements of independent Claim 8, and therefore fails to sustain a rejection of Claim 8 under 35 U.S.C. 102(e). Accordingly, independent Claims 1 and 8 are not anticipated by Kauffman and are allowable. Similarly Claims 2-7 and 9-14 are allowable as they incorporate their respective base claim limitations. The Applicants therefore respectfully request that the Examiner remove the rejections of Claims 1-14.

## **II. Rejection of Claims 15-20 under 35 U.S.C. § 103(a)**

The Examiner rejected Claims 15-20 as obvious over Kauffman in view of U.S. Patent Application Publication No. 2002/0046279 A1 to Chung (Chung). Addressing the rejection of independent Claim 15, the Examiner asserts that Kauffman teaches retrieving as-run logs from remote media players. Examiner's Response at 6. The Applicants respectfully disagree. The Examiner cites ¶ 17 of Kauffman for the teaching of a remote media player, apparently referring to the computer terminal 16. But if the computer terminal 16 is the remote media player, then Kauffman cannot teach the additional element of Claim 15, "a tracking subsystem that retrieves as-run logs ... from [the] remote players," because Kauffman does not teach retrieving anything from the computer terminal 16. Instead, Kauffman teaches a billing system 42 that may be used to collect information from the caching inserter 30 regarding the various advertising files. But as set forth previously, one of ordinary skill in the art in the art understands that a caching inserter is not a media player. Thus, Kauffman does not teach the element of retrieving as-run logs from remote players.

Furthermore, Kauffman does not suggest retrieving as-run logs from remote players. Kauffman teaches that the disclosed embodiment is advantageous for the collection of advertisement statistics from a centralized location, such as the point-of-presence (POP) 32. See ¶ 10. Thus,

Kauffman teaches away from the element of retrieving as-run logs from the remote players, as recited in Claim 15.

Moreover, Chung fails to cure the deficiency of Kauffman. The Examiner cites Chung to provide the teaching of a skin server storing and delivering skins. See Examiner's Response at 6. Chung addresses systems and methods for processing telephone calls over the internet (VOIP). See Abstract; see ¶ 22. Among the functional embodiments taught by Chung is a skin server to "provide[] enterprise information, so that a call client is established so as to be in conformity with characteristics of the enterprise." See ¶ 24. But Chung fails to teach or suggest remote players, and more specifically, fails to teach or suggest retrieving as-run logs from a remote player. Furthermore, the Applicants find no teaching or suggestion of retrieving as-run logs from a remote player from the other references made of record by the Examiner.

Thus, the combination of Kauffman and Chung fails to teach or suggest each and every element of the Claim 15, and the cited combination fails to support a *prima facie* case of obviousness of Claim 15 under 35 U.S.C. § 103(a). Therefore, independent Claim 15 and those claims depending therefrom are nonobvious over the combination of Kauffman and Chung. Accordingly, the Applicants respectfully request that Examiner remove the rejection of Claims 15-20.

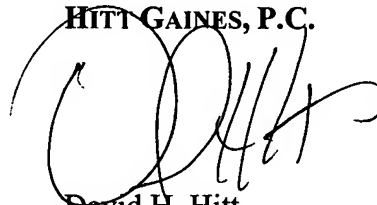
#### IV. Conclusion

In view of the foregoing amendments and remarks, the Applicants view all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-20.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

HITT GAINES, P.C.

A handwritten signature in black ink, appearing to read 'D. Hitt', is written over the printed name 'David H. Hitt'.

David H. Hitt

Registration No. 33,182

Dated: JUL 1, 2005

P.O. Box 832570  
Richardson, Texas 75083  
(972) 480-8800